

**Before the Federal Communications Commission
Washington, DC 20554**

In the Matter of:)	
)	
Schools and Libraries Universal)	CC Docket No. 02-6
Service Support Mechanism)	

**COMMENTS SUBMITTED BY THE
STATE OF ARKANSAS E-RATE WORK GROUP
IN RESPONSE TO THE
NOTICE OF PROPOSED RULEMAKING & ORDER**

I. Introduction

The State of Arkansas E-rate Workgroup (AEWG) respectfully submits its comments in the above referenced proceeding. The AEWG is a working group representing public officials responsible for K-12 education, and public libraries in the State of Arkansas. The Arkansas E-rate Workgroup (AEWG) works on behalf of schools, public library patrons and other state agencies that serve to increase performance for pre-K-12, K-12 students as well as enhance public libraries services.

The AEWG includes representatives from the following Arkansas agencies: Department of Education, Department of Information Systems, Governor's Office, Office of Executive CIO, and Arkansas State Library. These individuals have offered ongoing support for schools, libraries and consortia to navigate the E-rate application process from the beginning, through multiple steps and, finally, to the acquisition of discounts and/or refunds on their telecommunications and advanced services purchases. The AEWG members have knowledge about the E-rate program because they help school districts and public libraries with their E-rate applications, are responsible for state consortia applications, regularly work with the Universal Service Administrative Company's Schools and Libraries Division ("Administrator"), and have a particularly good grasp of the program's history and intent. These comments reflect the best knowledge available about the E-rate program and were developed with the principles that support the Telecommunications Act of 1996.

The AEWG applauds the Federal Communications Commission ("Commission") for its ongoing commitment to expand universal service of telecommunications services by supporting the Universal Service Program for Schools and Libraries, often referred to as the E-rate. The E-rate Program has successfully spurred connectivity across the nation, especially so for public and non-public K-12 schools, school districts and public libraries in poor and rural areas. The program's primary focus needs to remain with these schools and libraries, assisting them to complete their network infrastructure and allowing for on-going maintenance.

In this Notice of Proposed Rulemaking and Order (NPRM), the Commission has requested comments on specific issues and in the general program administration so that the Commission and the Administrator can fine-tune the program in ways that improve operation, ensure equitable distribution of program funds and prevent fraud, waste and abuse. We appreciate the opportunity to comment on these important issues and strive to provide the perspective of the state organizations we represent and the schools and libraries we serve. In this document, we will support the following principles relevant to the Telecommunications Act of 1996:

- A. The program should be competitively neutral regarding technology, vendors, and procurement.
- B. The educational interests of the applicants should guide determination of which services are eligible or ineligible.
- C. Cost effectiveness of current technology solutions for the applicant should govern the determination of eligible services, not whether services are leased, purchased or secured with a lease/purchase option.
- D. Where there is conflict between these principles, the outcome should be in the best interests of the applicant.

The AEWG believes these principles should be guiding factors in any decisions related to program improvement. These principles simplify administration, ensure equitable distribution of program funds and greatly reduce fraud, waste and abuse.

II. COMMENTS

1. How would the SLD handle services and equipment that are eligible only if used in certain ways?

A product should be listed as eligible or not eligible. The use of conditional eligibility adds to the confusion of the E-rate program. An applicant is adversely affected by this ambiguity.

2. Should the SLD post an online list of specific pre-approved product or services that applicants could choose from on their 471?

If the commission continues to base funding on products instead of functionality, any and all lists should be published. Posting an online list of specific pre-approved products or services that the applicant could choose from on their 471 could help a large number of applicants. Requests for funding are typically for the same equipment or service. The list must also contain PIA's "secret" list of pre-approved products and services. Although a list of common requests can be used, there must be a mechanism for those applicants requesting funding for an item not on the list. Applicants and service providers should be given the opportunity to submit technologies to the Administrator for approval and inclusion on the product list. Restricting applicants to only products and/or services on the list defeats the programs goal of competition.

3. If so, how often would the list need to be updated?

The updating of a list such as this has to become an on-going process. The list should be updated as new products and/or services are approved as eligible for funding. At a minimum update the list quarterly. The SLD has to provide a cut-off date for additions to the list prior to the opening of the filing window.

4. How would the FCC ensure that maintaining such a list would not inadvertently limit applicants' ability to take advantage of products and services newly introduced to the marketplace?

Most lists of this sort have as the last option “other” and an area for explanation. This would provide a means for the applicant to take advantage of products and services newly introduced to the marketplace.

5. How could applicants and vendors best provide input to the SLD on an ongoing basis regarding what specific products and services should be eligible?

The applicant should work with their state E-rate Coordinator to add a product /service to the eligibility list. An electronic reporting function needs to be developed by SLD for the coordinators and a means of reporting approved eligible items. Vendors must continue to work with the SLD with an electronic reporting function of their own.

6. We seek comment on the effectiveness and fairness of our WAN policy, and on whether other policies could result in a more equitable distribution of discounts in the program.

The Commission does not allow purchase of WAN equipment. Unfortunately, the definition of a WAN is much too broad, ranging from simple connections between two school campuses, public library outlets or entire state networks. Unless the definition can be made more specific, clearly WAN equipment should not be purchased with E-Rate funds. However, if adequate definitions can limit WANs, we see good reason to allow purchase of WAN if it can be shown that the purchase price is less than a lease of comparable service over a minimum period of three years. Should the applicant choose to lease a WAN, all vendors should be allowed to supply services not just common carriers. WANs are recognized as efficient delivery systems for communications within a network. This is an issue for school districts as well as libraries. The following paragraph is provided as an example of this issue.

A school district in rural Arkansas needed to connect 9 school building locations to the Internet service. The alternatives were: 1) connecting each building directly to the Internet at a vendor cost of \$9920/month, or 2) leasing a WAN to connect the buildings to each other and connect the WAN to the Internet at a vendor cost of \$4354/month. Without looking at the application of E-rate the WAN option was the most economical solution and therefore was the option selected.

A WAN can provide a secure network for a single applicant to share information and can provide the most efficient way to comply with the Children's Internet Protection Act through a single external connection to the Internet

7. One possible approach would be to increase the three-year period of time over which WAN-related capital expenses must be recovered through telecommunications service charges, so that the annual burden on available program funds is reduced. We seek comment on this and other possible approaches.

As stated in the preceding response we feel that the economics of a purchased WAN should be compared the cost of a leased WAN services over a three year period at a minimum. The actual WAN-related expenditures should, for either a purchased or leased WAN, be spread over a three-year period to reduce the annual burden on available program funds.

8. We seek comment on whether a change in our approach to WAN-related expenses is warranted by this increase in demand, and if so, what changes consistent with the statutory restrictions of section 254 of the Act should be adopted to meet the program's goals of improved operation, a fair and equitable distribution of funds, and effective oversight to prevent waste, fraud and abuse.

The AEWG is in favor of the Tennessee decision in relation to WAN-related expenses. The cost of transport should be covered by the program. This includes the cost of hardware, either purchased or leased, whether provided by a wire-line or wireless.

Internet access and telecommunications services must remain a priority of this program. The Telecommunications Act specifies that telecommunications providers shall provide discounted service to eligible entities for telecommunications and advanced services. Internal connection eligibility has been hotly debated since the outset. Consequently, with the Fourth Order on Reconsideration, the Commission has given explicit direction that telecommunications and Internet connections shall receive first priority. Now, largely because of the Brooklyn decision, the universe of priority one services has expanded to include items that would not only be considered internal connections but also vendor central office equipment to facilitate WANs. While it may be in the best interest of the program to include funding for on premise equipment such as routers, providing funding to build vendor infrastructure for eligible services to the detriment of competitors should NOT be provided. When considering funding discounts for WANs, applications should be evaluated on the basis of economic reasonableness for the services ordered.

The AEWG is not in favor of allowing service providers to bill to E-rate the build-out of their infra-structure, as in the Brooklyn decision. Allowing a vendor to finance their infra-structure build-out using the E-rate program will be a tremendous drain on funds. This defeats the program goal of competition. This year ABC telephone company provides service to a school or library. They have their infra-structure funded through the applicants E-rate request. After the contract expires three or five years down the road, ABC Telephone Company is the only company that can win an award on a new RFP. This is because they do not have to recoup the cost of the infra-structure. Or, XYZ

Telephone Company is awarded the contract for technical reasons and E-rate is paying for another infra-structure build-out.

9. We seek comment on whether we need to modify any rules or policies regarding the eligibility of wireless services for support under the schools and libraries mechanism so that distribution of funds is consistent with our principle of competitive neutrality and does not favor wireline technology over wireless technology.

Products and services eligibility should be based on the end result the applicant has applied for. Before entering the competitive bidding process the applicant reviews several alternative means of accomplishing their end goal. For instance, leased lines from a communications carrier versus wireless connectivity may be more expensive over a period of years. The return on investments is a strong consideration for any business person when managing their acquisitions. The way the E-rate program has evolved, the applicant may choose the lesser of products or services because it is eligible for E-rate funding. If they do not choose the E-rate eligible service, they would not be able to implement the project, thus, hindering schools or libraries advanced telecommunication services and depriving students of educational opportunities.

10. Accordingly, we seek comment on whether a change in voice mail eligibility would improve the operation of the program or otherwise further our goals of preventing fraud, waste and abuse and promoting the fair and equitable distribution of the program's benefits.

When the exclusion of a service creates an administrative burden to the applicant, service provider and SLD administration, and the savings to the program does not justify the effort, another approach is necessary. This is the case when excluding voice mail, E911 and directory assistance. The SLD requested a study to determine the overall percentage of miscellaneous items on the telephone invoice. The study showed the percentage of voice mail and other ancillary items compared to the overall charges on the telephone invoice is three percent (3%) or less. The administrative burden and expense on both the applicant and SLD to manage a request to ensure it does not include these items is greater than any savings the program generates by excluding the service. Therefore it is the AEWG's recommendation that the entire telephone bill be eligible for funding. This includes charges for voice mail, E911, directory assistance, etc. The only exception to this is advertisements in the yellow pages.

Another example of the cost savings not justifying the effort involved in separating out details is in telephone service. Under current program rule basic local and long distance telephone service is eligible for discounts even if the service is delivered only to an administrative office of the school building. When a copy of the telephone bill is requested and the bill reflects a line item for telephone service to support offices such as the cafeteria, bus barns, etc. the applicant is told to remove that line item from their request for funding. The SLD needs to re-think their policy on services for instructional usage and look at services for educational usage. A student is the responsibility of the school as soon as they step on the bus in the morning. They remain the school's

responsibility until they step off the bus in the evening.

Centrex service provides the same functionality as POTS. The cost per station in a Centrex environment for larger schools or schools in locations where a consortia lead provides Centrex service is often less than the cost of POTS. Therefore, Centrex service should be treated in the same manner as POTS.

11. We also seek comment on whether, in keeping with our current rules, universal service discounts would continue to be available for a provider only for the cost of access without content, if a service provider offers Internet access to consumers both with and without content.

Content should NOT be included as an eligible service in the E-rate program. How would the SLD manage the issue of what content is funded and what is not funded? There is already a drain on the available funds. Opening the door to funding content also opens the door for more waste and abuse.

12. The Commission seeks comment on the operational benefits and burdens of the 30 percent processing benchmark to applicants and the Administrator. We specifically seek input on whether there are alternatives that would improve program operation or otherwise further the other two goals of preventing fraud, waste, and abuse and promoting the equitable distribution of the program's funds while still providing appropriate incentives to applicants to seek discounts only for eligible services.

The 30 percent processing benchmark has been working well for applicants and should not be changed.

13.. We further seek comment on whether, and how, the Administrator and the Commission would verify and enforce compliance, and the extent that such actions promote our three goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

Attention needs to be given to funding requests that far exceed the needs of the applicant. These exorbitant funding requests need review for potential waste or abuse. The SLD should determine an average range of cost per student or client for the service over a reasonable period of years to determine reasonable funding requests. A flag should immediately go up when a small school district requests millions in E-rate funding.

14. We also seek comment on the extent to which a modification such as lengthening the remittance period would have a deleterious impact on eligible schools and libraries that is inconsistent with our three goals of improving program operation, ensuring that the benefits of the program are equitably distributed, and preventing fraud, waste, and abuse.

The applicant should be the driving force behind determining the best alternative for them when receiving funds. This choice may be a discount on services or filing a BEAR form 472 for reimbursement of services paid in full. If the applicant chooses the use of the BEAR form 472, the service provider should assign payment directly to the applicant.

It currently appears that the E-rate program is written to handle funding that is in the best interest of the service provider, not the interest of the applicant.

15. Finally, we seek comment on any other changes to our rules or policies concerning the appeals procedure of the Administrator or the Commission that might further the goals of improving program operation, ensuring a fair and equitable distribution of benefits and preventing waste, fraud, and abuse consistent with the 1996 Act.

Appeal deadlines should be changed from (30) days to sixty (60) days. The SLD should use the postmark date as the determining factor of whether the appellant filed in a timely manner, not the date of receipt.

Instances have occurred where applicants who have appealed have had a decision overturned. An applicant denied for the same product or service that did not appeal does not have their funding denial reversed. This has led to the current environment of “Appeal Everything”. When a funding decision is overturned, the SLD should have a mechanism for reviewing related denials and reversing the funding decisions. An example of this would be the “pink postcard” issue.

16. We seek comment on all of our current proposals regarding the funding of successful appellants.

Successful appeals should be funded immediately. Funds should be set aside for pending appeals during the funding year. Should successful appeal demand exceed the supply of set-aside funds, carryover funds from previous years should fund appeals. If carryover funds are exhausted or non-existent, any funds made available through the Form 500 process should be made available for successful appeals. Under no circumstances, however, should subsequent years funding be used for successful appeals.

17. We seek comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should explicitly authorize the Administrator to require independent audits of recipients and service providers, at recipients’ and service providers’ expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission. We specifically seek comment on the impact of such a rule on small entities. We further seek comment on alternatives that might provide other assurances of program integrity consistent with the goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

It is the AEWG’s desire to see that waste, fraud and abuse are eliminated from the program. Each state must become self-policing in some fashion. We do not believe the applicant should pay for the USAC audit unless the audit finds the entity is out of compliance in a meaningful way. We are in favor of a fine being levied for failure to comply with program rules. A set amount should be published for each type of offense and frequency of occurrence as is done for traffic tickets. If a person is caught speeding, the first ticket is not as high as the second. Subsequently, repeated speeding violations may result in the loss of driving privileges.

The AEWG feels that the majority of problems associated with fraud, waste, and abuse are the result of unscrupulous vendors and/or a lack of education of the school and library staff. Levying a fine large enough to get the violators attention will prove more productive than barring them from the program. If a vendor ABC Telephone Company violates program rules and is barred from participating in the program, all they have to do is change their name and request another SPIN. Then they are back in business using the same methods that got them in trouble previously.

18. We seek comment generally on whether to adopt additional measures to reduce potential waste, fraud, and abuse in the schools and libraries support mechanism. Consistent with our intent to continue strengthening program integrity, we seek input on further rules and procedures to address these matters.

Attention needs to be given to funding requests that far exceed the needs of the applicant. These exorbitant funding requests need review for potential waste or abuse. The SLD should determine an average range of cost per student or client for the service over a reasonable period of years to determine reasonable funding requests.

19. We seek to develop a record on the reasons why applicants and providers may fail to fully use committed funds under the program. We also seek comment on whether any other program changes would likely result in an increased percentage of committed funds being disbursed each funding year, which will help to reduce the overall amount of unused funds from the schools and libraries mechanism. In the event we adopt additional measures to reduce the existence of unused funds, we seek comment on whether it is necessary to adopt procedures to address a situation in which more funds are committed and used than are available for disbursement.

The delay in funding commitments by the SLD has had an impact on the use of committed funds. In FY 4 applicants did not receive funding notification until after the funding year began. Some applicants did not receive funding notification until Wave 15. If the applicant does not receive notification, they can not begin their projects. Therefore, they can not use the funds. This also impacts the following year's request for funds. The net effect is that there will always be unused funds in the program.

20. We further seek comment on whether, and how, the Administrator and the Commission would verify and enforce compliance, and the extent that such actions promote our three goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

21. We further seek comment on whether, and how, the Administrator and the Commission would verify and enforce compliance, and the extent that such actions promote our three goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

The Americans with Disabilities Act is enforced by other government agencies. Schools and Libraries must comply with the Act regardless of E-Rate funding. Certifying compliance with ADA on E-Rate forms would simply be redundant.

22. The commission seeks comment on whether a change to section 54.501(d)(1), recommended by consortia members and service providers working with consortia, would improve program operations. We also invite comment on whether changes to other consortia rules might achieve a greater consistency or fairness in our approach to the participation of consortia in the program. The Commission seeks comment on whether to clarify the rule to establish clearly that only ineligible private sector members seeking service part of a consortium with eligible members are prohibited from obtaining below-tariffed rates from providers that offer tariffed services (tariffed providers).

Consortia proposals are critical for states having a preponderance of remote and rural school districts. These districts are generally of the size and limited staff that would preclude their participation in the e-rate services. The language may eliminate the participation of private entities- private schools, private colleges and universities. Arkansas supports the position of requiring the removal of any private entities in a consortium and re-computing the eligibility rate before declaring a proposal totally ineligible.

In support of this position, current revisions to the Elementary and Secondary Education Act (ESEA) approved and signed by the President in January 2002, favor additional flexibility and options for participation in federally funded initiatives. Any attempt to eliminate or make the application process less favorable for rural schools is not in keeping with these recent trends.

23. We therefore seek comment on such rules or policies in order to determine whether any are no longer necessary or in the public interest.

The form 470 does not meet the intended purpose for which it was designed. The applicants have to follow state and local procurement laws. State laws are designed to ensure competition. Requiring the applicant also file a 470 to meet program requirements is a duplication of this effort.

Those wishing to reply to these comments may send a copy to me. Please send reply comments to: becky.rains@mail.state.ar.us.

Respectfully Submitted:

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